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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.39 to 42 of 2006
& TCMP Nos.35 to 37 of 2006

Commissioner of Income Tax
Madras. .. Appellant in all the TCs

Vs.

M/s.India Pistons Limited,
Husur Garden, Sembium,
Chennai-600 011 .. Respondent in all Tcs

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 15.03.2005 in ITA Nos.247, 1038, 435 & 1157/Mds/99 for the assessment years 1995-96 and 1996-97 against the order dated 2.12.1998 & 12.5.99 in ITA.Nos.17/98-99 and 231/98-99 on the file of the Commissioner of Income-Tax (Appeals) -V, Chennai 34, against the order dated 9.3.98 and 21.12.1998 in PAN/GIR No.47-004-7357 and AAA.CI.1439E respectively on the file of the Deputy Commissioner of Income Tax, Special Range I, Chennai.

For Appellant : Ms. Pushya Sitaraman, Sr.S.C. for
Mr. J. Naresh Kumar

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA Nos.247, 1038, 435 & 1157/Mds/99, dated 15.03.2005.

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2. The Revenue is the appellant. The assessee is a manufacturer of Pistons for automobiles and other stationary engines. The assessee filed returns of income for the assessment years 1995-96 and 1996-97, wherein the assessee claimed inter alia, deduction under Section 80HHC of the Income Tax Act (herein after referred to as 'The Act') in respect of its income from exports, deduction in respect of interest on foreign bills (for 1995-96 only), and deduction of customs duty from closing stock. The assessing officer found that the assessee had excluded the sales tax and excise duty from the total turnover for the purpose of computation of deduction under Section 80HHC of the Act and accordingly he re-computed the total turnover including these elements. The assessing officer also disallowed the interest on foreign bills under Section 40(a)(i) as no tax was deducted at source, and included the value of customs duty into the valuation of closing stock. Hence, the assessee filed appeals before the Commissioner of Income-tax (Appeals), who allowed the appeals in favour of the Revenue with regard to the issue inclusion of sales tax and excise duty in the total turnover for the purpose of 80HHC and other two issues in favour of the assessee. On appeals, at the instance of the Revenue as well as by the assessee, the Income Tax Appellate Tribunal dismissed the appeals filed by the Revenue by following its own earlier orders in ITA 1044/Mds/98 and allowed the appeals filed by the assessee.

3. Aggrieved by the same, the Revenue has preferred the above appeals raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest on foreign bills is a deductible expenditure?
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the excise duty and sales tax should be excluded from the total turnover to arrive at the deduction under Section 80HHC?
> 3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that customs duty paid is not to be included in the value of closing stock?"

4.1. With regard to the first question whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest on foreign bills is a deductible expenditure, it is not in dispute that the assessee claimed deduction in respect of Interest on Foreign Bills. The assessing officer made disallowance by following the earlier assessment orders. The Commissioner of Income Tax(A) deleted the disallowance made by the assessing officer. On appeals by the Revenue, the Appellate Tribunal allowed the issue in favour of the assessee.

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4.2. It could be found that the conditions for supply of goods by the non-resident to the assessee were that the payment of purchase price in instalments was to be made with the condition that the assessee will compensate the supplier by means of interest on the unpaid instalments. The unpaid instalment was not the same as loan and therefore, interest paid could not be treated as paid on the loan and hence, deduction of tax at source was not attracted. Since it is not the case of the Revenue that interest was paid with reference to loan so that the requirement of tax deduction at source would have been attracted, no disallowance under Section 40(a)(i) can be made. Section 40(a)(i) contemplates that interest, royalty, fees for technical services or other sum shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession", which reads as follows:

> "40. Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession",-
>
> (a) any interest (not being interest on a loan issued for public sub-subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable-
>
> (A) outside India; or
>
> (B) in India to a non-resident, not being a company or to a foreign company,
> * * * * * * * *

That apart, even in the assessment order, the assessing officer mentioned that this was interest pertains to foreign bills. If that be so, since the amount was not a loan and the amount of interest paid was not interest on loan, deduction of tax at source, is not attracted and as such, we find that the directions of the Commissioner as well as the Tribunal are strictly in compliance with Section 42(a)(i) of the Act, which requires no interference.

5.1. In respect of question No.2 viz., whether in the facts and circumstances of the case, the Tribunal was right in holding that the excise duty and sales tax should be excluded from the total turnover to arrive at the deduction under Section 80HHC, this Court in COMMISSIONER OF INCOME TAX VS. WHEELS INDIA LTD. (275 ITR 319) and COMMISSIONER OF INCOME TAX VS. SUNDARAM FASTENERS LTD.(272 ITR 652) held that it is highly impossible to accept the contention that the term 'turnover' would include the excise duty and sales tax components which are all indirect taxes and which the assessee has to collect and

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pay over to the Government and such statutory dues will not have any element of profit of business and therefore, the Sales tax and excise duty are not to be included in the total turnover while computing the deduction under Section 80HHC.

5.2. In view of the ratio laid down by this Court in the decisions cited supra, we hold that the sales tax and excise duty are not to be included in the total turnover, while computing the deduction under Section 80HHC.

6.1. As far as the third question, viz., whether in the facts and circumstances of the case, the Tribunal was right in holding that customs duty paid is not to be included in the value of closing stock, this Court, in COMMISSIONER OF INCOME TAX VS. ENGLISH ELECTRIC CO.OF INDIA LTD. (243 ITR 512) held that the liability for payment of excise duty was incurred when the process of manufacture was complete in relation to an excisable item. All payments and liability incurred towards duty were exhibited separately. The assessee's liability for payment of duty could not be regarded as part of the assets held by the assessee in the form of higher value assigned to the closing stock. A liability could not be converted into an asset in that manner. A liability was an item deductible for the purpose of arriving at the profits for the year and only when such deduction was given the amount could be added to the value of the closing stock.

6.2. In view of the ratio laid down by this Court in the decision cited supra, we hold that the Custom Duty on Closing stock are not to be included in the total turnover, while computing the income under Section 80HHC of the Act.

7. In view of the foregoing conclusion, we find no error or illegality in the order of the Tribunal and the same requires no interference. Hence, no substantial question of law would arise for consideration of this Court. Accordingly, the tax case appeals are dismissed. Consequently, TCMP Nos.35 to 37 of 2006 are also dismissed.

sl

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,Income Tax Appellate Tribunal
   Madras Bench "A" Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai 90.

2. The Commissioner of Income Tax (Appeals) V,
   Chennai.

3. The Deputy Commissioner of Income Tax, Special Range I,
   Chennai.

4. The Commissioner of Income Tax,
   Chennai.

5. The Joint Commissioner of Income Tax,
   Special Range I, Chennai.

+ 1 cc to Mrs. Pushya Sitaraman, Advocate SR No.5766

GM(CO)
SR/6.3.2006

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